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December 28, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: March 8, 2005

Case Number: TSO-0194

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter "the Individual") for continued access authorization. This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's suspended access authorization should be restored. For the reasons set forth below, it is my decision that the Individual's access authorization should not be restored.

I. APPLICABLE REGULATIONS

The regulations governing the Individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."

An Individual is eligible for access authorization if such authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). "Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." *Id.*; see generally *Dept. of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security" test indicates that "security clearance determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance). Thus, the standard for eligibility for a clearance differs from the standard applicable to criminal proceedings in which the prosecutor has the burden of proof.

If a question concerning an individual's eligibility for a clearance cannot be resolved, the matter is referred to administrative review. 10 C.F.R. § 710.9. The individual has the option of obtaining a decision by the manager at the site based on the existing information or appearing before a hearing officer. 10 C.F.R. § 710.21(3). Again, the burden is on the individual to present testimony or evidence to demonstrate that he is eligible for access authorization, i.e. that

access authorization will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(a).

II. BACKGROUND

The Individual has been employed by a contractor at a DOE facility in a position which requires him to have an access authorization. On a March 2002 Questionnaire for Sensitive Positions (QNSP), the Individual indicated that he filed for a Chapter 7 Bankruptcy in June 1994. DOE Exhibit (Ex.). 7 at 8. On that QNSP, the Individual also noted that in 1999 he became delinquent in several credit and consumer accounts. *Id.* at 9. Based on the information listed on the March 2002 QNSP, the Individual was then referred for Personnel Security Interviews (PSI) in October 2002 and in January 2004. During the October 2002 PSI, the Individual discussed the 1994 Chapter 7 Bankruptcy and the delinquent consumer accounts. He stated that the debt discharged in the bankruptcy proceeding was primarily old student loans and medical bills. DOE. Ex. 8 at 13. The Individual also stated that he became delinquent in several consumer and credit accounts as a result of the accumulation of ordinary living expenses. *Id.* at 21. The Individual stated that he intended to repay the debt and agreed to set up repayment plans to achieve that goal. *Id.* at 19, 22-23. During the January 2004 PSI, the Individual stated that he had not resolved his outstanding debts. DOE Ex. 6 at 9. He stated that he lacked sufficient funds to pay down the debt. *Id.* Following the PSI, in June 2005, the Individual filed another Chapter 7 Bankruptcy. Individual’s Ex. B.

In September 2004, the DOE notified the Individual that his 1994 bankruptcy filing and his inability to resolve his outstanding debt after informing the DOE that he would do so constituted derogatory information that created a substantial doubt as to the Individual’s continued eligibility for access authorization under 10 C.F.R. § 710.8(l) (Criterion L).¹ Notification Letter, September 14, 2004. Upon receipt of the Notification Letter, the Individual requested a hearing in this matter. *See* Individual’s Letter, October 5, 2004. The DOE forwarded the request to the Office of Hearings and Appeals (OHA). The OHA Director appointed me to serve as the hearing officer.

A hearing was held in this matter and the Individual represented himself. The Individual offered his own testimony, as well as that of his wife, his manager, and his team leader. The local DOE office did not present any witnesses.

III. THE HEARING

The Individual did not dispute the matters giving rise to the Notification Letter, i.e. the 1994 Chapter 7 Bankruptcy filing and his failure to resolve his outstanding debt after telling the DOE he would do so. Instead, he testified that after the recent discharge of his debt in bankruptcy he is in a better position to manage his finances in the future and that he is honest, reliable, and trustworthy. The following discussion highlights portions of the hearing testimony relevant to that contention.

¹ The Individual filed for his 2005 bankruptcy after the date the Notification Letter was sent to him and therefore the 2005 bankruptcy is not referenced in that letter.

A. The Individual

The Individual testified about the circumstances leading up to the 1994 bankruptcy filing. Transcript (hereinafter “Tr.”) at 21-22. He stated that the debt included in that filing was primarily from student loans and medical bills. Tr. at 23. The Individual stated that the 2005 bankruptcy filing resulted from accumulated consumer credit debt that he was unable to repay. Tr. at 22. According to the Individual, he wanted to resolve his financial problems, but did not believe he had many options at the time other than bankruptcy. Tr. at 60. The Individual stated that he was hopeful that once his debt was discharged in the 2005 bankruptcy that he would be in a “fairly decent position.” Tr. at 52. He further stated:

Once I come out of the bankruptcy, I’ll be in fairly decent shape, because I’m – you know, I should be getting, you know, a three-and-a-half to four percent raise at the end of September, I’ve got the car paid off, insurance is down, those kinds of things, and I’m not intending to take on any – any debt at all, you know, keeping myself free, and I should be in better shape.

Tr. at 61. The Individual indicated that since he had repaid his automobile loan in full and obtained less expensive insurance, he now had more money available to cover expenses. Tr. at 24-25. The Individual stated that he did not currently have a monthly budget for his finances, but that he was going to try to develop one. Tr. at 62. The Individual also stated “I’ve finally gotten to a place where I think I’ve – you know, I can finally get by on what I’m actually making...and I haven’t felt that way in many years.” Tr. at 71.

B. The Individual’s Wife

The Individual’s wife discussed her family’s financial situation. She stated,

It’s a situation where – where we’ve incurred different expenses, but having to meet, you know, just basic necessities, you know, our utilities and other daily expenses, it’s been very difficult, and these have to be met. It’s not – it isn’t the situation where we’re just spending our money extravagantly and buying luxurious things, you know. It’s been a struggle. I can’t understand – you know, I’ve asked him myself, you know, “Why can’t we make it?” I don’t like to live our life without integrity, and not be able to – you know, say that we’re going to pay and then we’re not able to.

Tr. at 13-14. The Individual’s wife stated that the family’s money is used to pay for food, gas, basic utilities, and, when necessary, clothing. Tr. at 14. The Individual’s wife also stated that the Individual handled most of the family’s finances, but that she would ensure that they did not continue to have financial problems. Tr. at 19, 24, 26.

C. Individual's Manager

The Individual's manager described the Individual as an "excellent employee." Tr. at 29. According to the manager, the Individual was a "very hard worker, always on time, and, you know, stays late if need be." *Id.* The manager stated that the Individual was honest, reliable and trustworthy. Tr. at 30. He stated that the Individual maintained a good attitude and was a positive influence on his team. Tr. at 37. When asked about the Individual's income, the manager stated that he believed the Individual made "good money" and that the contractor paid its employees "competitive" rates. Tr. at 33-34.

D. Individual's Team Leader

The Individual's team leader stated that the Individual's work was excellent. Tr. at 41. He stated that even knowing about the Individual's two bankruptcy filings he did not have concerns regarding the Individual's honesty, reliability and trustworthiness. Tr. at 41-42. The team leader stated that there was never any indication that the Individual's personal problems were affecting his work. Tr. at 46. The team leader also stated that in his experience with the Individual, the Individual appeared to be frugal and did not spend much money. Tr. at 43, 45.

IV. STANDARD OF REVIEW

Under Part 710, the DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). After such derogatory information has been received and a question concerning an individual's eligibility to hold an access authorization has been raised, the burden shifts to the individual to prove that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(a).

Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. In considering derogatory information, the DOE weighs various factors including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). The ultimate decision concerning eligibility is a comprehensive, common sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a).

V. SECURITY CONCERN

The derogatory information concerning Criterion L centers on the Individual's financial problems. Criterion L concerns conduct tending to show that the Individual was "not honest, reliable, or trustworthy, or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(l).

Bankruptcy is a legal means of resolving financial problems and becoming free of debt. However, bankruptcy raises security concerns to the extent that it illustrates a pattern of financial irresponsibility or difficulty. A pattern of financial irresponsibility may indicate that an individual is not honest, reliable or trustworthy and could make an individual susceptible to blackmail or coercion. *See, e.g., Personnel Security Hearing, Case No. VSO-0081*, 25 DOE ¶ 82,805 (1996). The Individual's 1994 bankruptcy filing and the Individual's failure to manage his finances responsibly after telling the DOE that he would do so gave rise to security concerns regarding the Individual's honesty, reliability, and trustworthiness. Given the Individual's well-documented financial difficulties, the local security office had more than sufficient grounds to invoke Criterion L.

VI. FINDINGS OF FACT AND ANALYSIS

The Individual does not dispute the nature of his financial difficulties. Rather, he maintains that his financial problems have been resolved through his recent bankruptcy and, therefore, are no longer a threat to his honesty, reliability and trustworthiness. Thus, the only issue to be resolved is whether the Individual has presented sufficient evidence to support that contention.

The testimony and evidence in this case does not support the conclusion that the Criterion L security concern has been fully resolved. The Individual stated that he was now in a better position to better manage his finances in the future. The Individual's debt was discharged in bankruptcy in October 2005. Individual's Ex. C. According to the Individual, he has more money available since he repaid his automobile loan and obtained a new auto insurance policy with lower premiums. The Individual's wife also stated that she would ensure that the family's finances remained under control. However, this is insufficient to fully mitigate the DOE's security concerns.

In prior cases involving financial irresponsibility, we have held that "[o]nce an individual has demonstrated a pattern of financial irresponsibility; he must demonstrate a new, sustained pattern of financial responsibility for a period of time that is sufficient to demonstrate that a recurrence of the past pattern is unlikely." *Personnel Security Hearing, Case No. VSO-0520*, 29 DOE ¶ 82,862 at 86,023 (2002), *citing Personnel Security Hearing, Case No. VSO-0108*, 26 DOE ¶ 82,764 at 85,699 (1996). In the present case, the Individual has not demonstrated any recent significant period in which he has been free from financial problems. The Individual filed a Chapter 7 Bankruptcy in 1994. In 1999, the Individual became delinquent on several consumer credit accounts and, in 2005, filed a second Chapter 7 Bankruptcy. In the period between the first PSI in 2002 and the second PSI in 2004, the Individual did not take significant action to resolve his financial problems. At the hearing, the Individual stated that he has not worked with a budget in the past and had not yet developed a clear budget or plan for managing his finances in the future.² Despite the Individual's contentions that he will manage his finances better in the future, there is no established pattern of the Individual having been able to avoid financial problems. Nor is there substantial evidence that the Individual has tried to improve his ability to

² The Individual did submit a monthly budget after the date of the hearing in July 2005. Individual's Ex. A-1 (attachment in July 27, 2005 E-mail from the Individual to Richard Cronin, Hearing Officer). This budget shows a net surplus of \$191 per month. While this budget is encouraging, there has not been sufficient time to demonstrate that the Individual can maintain his household within this budget.

deal with family finances, such as by obtaining some type of credit counseling or by attending some other relevant financial education program.³ I note that this does not appear to be a case where there is reckless spending. However, the fact remains that when an individual has significant financial problems, there is a security concern. While the Individual's 2005 bankruptcy has reduced the financial pressure on him, I simply do not have sufficient evidence before me to convince me that he will be able to avoid financial problems in the future.

VII. CONCLUSION

As explained above, I find that the Individual has not fully resolved the Criterion L concern cited in the Notification Letter. Therefore, I cannot conclude that restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Consequently, the Individual's access authorization should not be restored.

Richard A. Cronin, Jr.
Hearing Officer
Office of Hearings and Appeals

Date: December 28, 2005

³ The Individual stated in an E-mail sent to me after the hearing that he was investigating attending Debtors Anonymous as well as reviewing various web sites concerning financial planning. E-mail from the Individual to Richard Cronin, Hearing Officer (July 27, 2005). However, I have no further evidence concerning the extent of his participation in these activities.